

ASSEMBLY BILL

No. 654

Introduced by Assembly Members Berg and Levine

February 17, 2005

An act to add Chapter 3.95 (commencing with Section 7195) to Part 1 of Division 7 of the Health and Safety Code, relating to death.

LEGISLATIVE COUNSEL'S DIGEST

AB 654, as introduced, Berg. California Compassionate Choice Act.

Existing law authorizes an adult to give an individual health care instruction and to appoint an attorney to make health care decisions for that individual in the event of his or her incapacity pursuant to a power of attorney for health care.

This bill would enact the California Compassionate Choice Act, which would authorize an adult who meets certain qualifications, and who has been determined by his or her attending physician to be suffering from a terminal disease, as defined, to make a request for medication for the purpose of ending his or her life in a humane and dignified manner. The bill would establish procedures for making these requests.

This bill would further provide that no provision in a contract, will, or other agreement, or in a health care service plan contract, policy of disability insurance, or health benefit plan contract, shall be valid to the extent it would affect whether a person may make or rescind a request for medication for the purpose of ending his or her life in a humane and dignified manner. The bill would prohibit the sale, procurement, or issuance of any life, health, or accident insurance or annuity policy, or the rate charged for any policy, from being conditioned upon or affected by the request. The bill would require

that nothing in its provisions be construed to authorize ending a patient's life by lethal injection, mercy killing, or active euthanasia, and would provide that action taken in accordance with the act shall not constitute suicide or homicide.

This bill would provide immunity from civil or criminal liability or professional disciplinary action for participating in good faith compliance with the act. This bill would also provide that willful alteration or forgery of a request with certain intent, and coercion or exertion of undue influence on a patient to make a request, are felonies, thereby imposing a state-mandated local program.

This bill would require the State Department of Health Services to adopt regulations regarding the collection of information to determine the use of and compliance with the act, and would require the department to annually review a sample of certain records and make a statistical report of the information collected.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 3.95 (commencing with Section 7195)
2 is added to Part 1 of Division 7 of the Health and Safety Code, to
3 read:

4
5 CHAPTER 3.95. CALIFORNIA COMPASSIONATE CHOICE ACT

6
7 Article 1. General Provisions

8
9 7195. (a) The Legislature believes that dying patients should
10 have choices throughout the continuum of palliative care and that
11 much must be done to improve access to hospice care and pain
12 management. The Legislature finds that medical studies have
13 shown that between 5 and 10 percent of dying patients
14 experience severe pain and suffering that cannot be palliated by

1 the best hospice or comfort care. The Legislature finds that in
2 response to the Death with Dignity Act in the State of Oregon,
3 that the referrals to hospice increased significantly. In addition,
4 doctors significantly increased the use of morphine and other
5 strong pain medications, thus improving the end-of-life care for
6 more dying patients.

7 (b) (1) It is the intent of the Legislature that the choice of
8 physician-assisted dying, as defined in this chapter, be viewed as
9 an end-of-life option for dying patients.

10 (2) It is the intent of the Legislature that the provisions of this
11 chapter be strictly construed and not expanded in any manner.
12 The restrictions and safeguards in the provisions of this chapter
13 are based on the intent of the Legislature to balance the personal
14 and autonomous choice of dying patients regarding the time and
15 manner of their death and the Legislature's goal of providing
16 safeguards to ensure that there are not instances of a coerced,
17 unwanted, or early death by a vulnerable dying patient.

18 (3) It is the intent of the Legislature that a disability or age
19 alone are not reason for a patient to be a qualified patient as
20 defined in subdivision (1) of Section 7195.1. Any disabled
21 individual or elderly person, and any physician who is the
22 attending physician to these individuals, must strictly comply
23 with all of the provisions of this chapter. Strict and rigorous
24 attention must be evidenced in distinguishing chronic conditions,
25 which are not eligible conditions under this chapter, and terminal
26 illnesses, which are eligible, as described in this chapter.

27 7195.1. For purposes of this chapter the following definitions
28 shall apply:

29 (a) "Adult" means an individual who is 18 years of age or
30 older.

31 (b) "Attending physician" means the physician who has
32 primary responsibility for the care of the patient and for
33 treatment of the patient's terminal disease.

34 (c) "Capable" means that in the opinion of a court or in the
35 opinion of the patient's attending physician or consulting
36 physician, a patient has the ability to make and communicate
37 health care decisions to health care providers, including
38 communication through persons familiar with the patient's
39 manner of communicating if those persons are available.
40 Incapable means not capable.

1 (d) “Consulting physician” means a physician, other than the
2 attending physician, who is qualified by specialty or experience
3 to make a professional diagnosis and prognosis regarding the
4 patient’s disease.

5 (e) “Counseling” means a consultation between a state
6 licensed psychiatrist or psychologist and a patient for the purpose
7 of determining whether the patient is suffering from a psychiatric
8 or psychological disorder, or depression causing impaired
9 judgment.

10 (f) “Health care provider” means a person licensed, certified,
11 or otherwise authorized or permitted by the law of this state to
12 administer health care in the ordinary course of business or
13 practice of a profession, and includes a licensed health care
14 facility.

15 (g) “Health care facility” means any health facility described
16 in Section 1250.

17 (h) “Informed decision” means a decision, made by a qualified
18 patient, to request and obtain a prescription to end his or her life
19 in a humane and dignified manner, that is based on an
20 appreciation of the relevant facts, and is made after being fully
21 informed by the attending physician of all of the following:

22 (1) His or her medical diagnosis.

23 (2) His or her prognosis.

24 (3) The potential risk associated with taking the medication to
25 be prescribed.

26 (4) The probable result of taking the medication to be
27 prescribed.

28 (5) The feasible alternatives, including, but not limited to,
29 comfort care, hospice care, and pain control.

30 (i) “Medically confirmed” means the medical opinion of the
31 attending physician has been confirmed by a consulting
32 physician who has examined the patient and the patient’s relevant
33 medical records.

34 (j) “Patient” means a person who is under the care of a
35 physician.

36 (k) “Physician” means a doctor of medicine or osteopathy
37 licensed to practice medicine by the Medical Board of California.

38 (l) “Qualified patient” means a capable adult who is a resident
39 of California and has satisfied the requirements of this chapter in

1 order to obtain a prescription for medication to end his or her life
2 in a humane and dignified manner.

3 (m) “Resident” means a person who has lived in a principal
4 place of residence in the State of California for six months or
5 more.

6 (n) “Terminal disease” means an incurable and irreversible
7 disease that has been medically confirmed and will, within
8 reasonable medical judgment, produce death within six months.

9 7195.3. An adult who is capable, is a resident of California,
10 has been determined by the attending physician and a consulting
11 physician to be suffering from a terminal disease, and who has
12 voluntarily expressed his or her wish to die, may make a written
13 request for medication for the purpose of ending his or her life in
14 a humane and dignified manner in accordance with this chapter.

15 7195.5. (a) A valid request for medication under this chapter
16 shall be in substantially the form prescribed by Section 7199,
17 signed and dated by the patient and witnessed by at least two
18 individuals who, in the presence of the patient, attest that to the
19 best of their knowledge and belief the patient is capable, acting
20 voluntarily, and is not being coerced to sign the request.

21 (b) One of the witnesses shall be a person who is not any of
22 the following:

23 (1) A relative of the patient by blood, marriage, or adoption.

24 (2) A person who at the time the request is signed would be
25 entitled to any portion of the estate of the qualified patient upon
26 death under any will or by operation of law.

27 (3) An owner, operator, or employee of a health care facility
28 where the qualified patient is receiving medical treatment or is a
29 resident.

30 (c) The patient’s attending physician at the time the request is
31 signed shall not be a witness.

32 (d) If the patient is a patient in a long-term health care facility
33 at the time the written request is made, one of the witnesses shall
34 be an individual designated by the facility and having the
35 qualifications specified in regulations adopted by the State
36 Department of Health Services.

37
38 Article 2. Safeguards and Effects
39

40 7196. The attending physician shall do all of the following:

- 1 (a) Make the initial determination of whether a patient has a
- 2 terminal disease, is capable, and has made the request
- 3 voluntarily.
- 4 (b) Inform the patient of all of the following:
- 5 (1) His or her medical diagnosis.
- 6 (2) His or her prognosis.
- 7 (3) The potential risks associated with taking the medication to
- 8 be prescribed.
- 9 (4) The probable result of taking the medication to be
- 10 prescribed.
- 11 (5) The feasible alternatives, including, but not limited to,
- 12 comfort care, hospice care, and pain control.
- 13 (c) Refer the patient to a consulting physician for medical
- 14 confirmation of the diagnosis, and for a determination that the
- 15 patient is capable and acting voluntarily.
- 16 (d) Refer the patient for counseling if appropriate pursuant to
- 17 Section 7196.2.
- 18 (e) Request that the patient notify next of kin.
- 19 (f) Inform the patient that he or she has an opportunity to
- 20 rescind the request at any time and in any manner, and offer the
- 21 patient an opportunity to rescind at the end of the 15-day waiting
- 22 period described in Section 7196.5.
- 23 (g) Verify, immediately prior to writing the prescription for
- 24 medication under this chapter, that the patient is making an
- 25 informed decision.
- 26 (h) Fulfill the medical record documentation requirements of
- 27 Section 7196.8.
- 28 (i) Ensure that all appropriate steps are carried out in
- 29 accordance with this chapter prior to writing a prescription for
- 30 medication to enable a qualified patient to end his or her life in a
- 31 humane and dignified manner.
- 32 7196.1. Before a patient is qualified under this chapter, a
- 33 consulting physician shall examine the patient and his or her
- 34 relevant medical records and shall, in writing, confirm, the
- 35 attending physician's diagnosis and that the patient is suffering
- 36 from a terminal disease and verify that the patient is capable, is
- 37 acting voluntarily, and has made an informed decision.
- 38 7196.2. If, in the opinion of the attending physician or the
- 39 consulting physician, a patient may be suffering from psychiatric
- 40 or psychological disorder, or depression causing impaired

1 judgment, either physician shall offer the patient for counseling.
2 No medication to end a patient's life in a humane and dignified
3 manner shall be prescribed until the person performing the
4 counseling determines that the patient is not suffering from a
5 psychiatric or psychological disorder, or depression causing
6 impaired judgment.

7 7196.3. No person shall receive a prescription for medication
8 to end his or her life in a humane and dignified manner unless he
9 or she has made an informed decision as defined in subdivision
10 (h) of Section 7195. Immediately prior to writing a prescription
11 for medication in accordance with this chapter, the attending
12 physician shall verify that the patient is making an informed
13 decision.

14 7196.4. The attending physician shall ask the patient to notify
15 the patient's next of kin of his or her request for medication
16 pursuant to this chapter. A patient who declines or is unable to
17 notify next of kin shall not have his or her request denied for that
18 reason.

19 7196.5. In order to receive a prescription for medication to
20 end his or her life in a humane and dignified manner, a qualified
21 patient shall have made an oral request and a written request, and
22 reiterate the oral request to his or her attending physician no less
23 than 15 days after making the initial oral request. At the time the
24 qualified patient makes his or her second oral request, the
25 attending physician shall offer the patient an opportunity to
26 rescind the request.

27 7196.6. A patient may rescind his or her request at any time
28 and in any manner without regard to his or her mental state. No
29 prescription for medication under this chapter may be written
30 without the attending physician offering the qualified patient an
31 opportunity to rescind the request.

32 7196.7. No less than 15 days shall elapse between the
33 patient's initial oral request and the writing of a prescription
34 under this chapter. No less than 48 hours shall elapse between the
35 patient's written request and the writing of a prescription under
36 this chapter.

37 7196.8. The following shall be documented or filed in the
38 patient's medical record:

39 (a) All oral requests by a patient for medication to end his or
40 her life in a humane and dignified manner.

1 (b) All written requests by a patient for medication to end his
2 or her life in a humane and dignified manner.

3 (c) The attending physician's diagnosis and prognosis, and his
4 or her determination that the patient is capable, acting
5 voluntarily, and has made an informed decision.

6 (d) The consulting physician's diagnosis and prognosis, and
7 his or her verification that the patient is capable, acting
8 voluntarily, and has made an informed decision.

9 (e) A report of the outcome and determinations made during
10 counseling, if performed.

11 (f) The attending physician's offer to the patient to rescind his
12 or her request at the time of the patient's second oral request
13 pursuant to Section 7196.5.

14 (g) The attending physician's discussion with the patient of
15 feasible alternatives, including, but not limited to, hospice care,
16 comfort care, and pain control.

17 (h) A note by the attending physician indicating that all the
18 requirements of this chapter have been met and indicating the
19 steps taken to carry out the request, including a notation of the
20 medication prescribed.

21 7196.9. Only requests made by California residents under this
22 chapter shall be granted.

23 7197.1. (a) The department shall adopt regulations regarding
24 requirements for the collection of information to determine the
25 use of and compliance with this chapter. The information
26 collected shall not be a public record and shall not be made
27 available for inspection by the public.

28 (b) The department shall generate and make available to the
29 public an annual statistical report of information collected
30 pursuant to subdivision (a).

31 (c) The department shall annually review a sample of records
32 maintained pursuant to this chapter.

33 7197.3. (a) No provision in a contract, will, or other
34 agreement, whether written or oral, to the extent the provision
35 would affect whether a person may make or rescind a request for
36 medication to end his or her life in a humane and dignified
37 manner, shall be valid.

38 (b) No obligation owing under any contract in existence on or
39 before January 1, 2006, shall be conditioned or affected by the

1 making or rescinding of a request by a person for medication to
2 end his or her life in a humane and dignified manner.

3 (c) No health care service plan contract, as defined in
4 subdivision (r) of Section 1345, shall be conditioned upon or
5 affected by the making or rescinding of a request by a person for
6 medication to end his or her life in a humane and dignified
7 manner. Any such contract provision shall be invalid.

8 (d) No provision of a policy of disability insurance or a health
9 benefit plan contract that provides coverage for hospital, medical,
10 or surgical expenses pursuant to Part 2 (commencing with
11 Section 10110) of Division 2 of the Insurance Code shall be
12 conditioned upon or affected by the making or rescinding of a
13 request by a person to end his or her life in a humane and
14 dignified manner. Any such policy provision shall be invalid.

15 7197.5. The sale, procurement, or issuance of any life, health,
16 or accident insurance or annuity policy or the rate charged for
17 any policy shall not be conditioned upon or affected by the
18 making or rescinding of a request by a person for medication to
19 end his or her life in a humane and dignified manner. A qualified
20 patient's act of ingesting medication to end his or her life in a
21 humane and dignified manner in accordance with this chapter
22 shall not have an effect upon a life, health, or accident insurance
23 or annuity policy.

24 7197.7. Nothing in this chapter shall be construed to authorize
25 a physician or any other person to end a patient's life by lethal
26 injection, mercy killing, or active euthanasia. Actions taken in
27 accordance with this chapter shall not, for any purpose, constitute
28 suicide, assisted suicide, mercy killing, or homicide, under the
29 law.

30 Article 3. Immunities and Liabilities

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32 7198. Except as provided in Section 7198.5:

33 (a) No person shall be subject to civil or criminal liability or
34 professional disciplinary action for participating in good faith
35 compliance with this chapter. This includes being present when a
36 qualified patient takes the prescribed medication to end his or her
37 life in a humane and dignified manner.

38 (b) No professional organization or association, or health care
39 provider, may subject a person to censure, discipline, suspension,
40

1 loss of license, loss of privileges, loss of membership, or other
2 penalty for participating or refusing to participate in good faith
3 compliance with this chapter.

4 (c) No request by a patient for or provision by an attending
5 physician of medication in good faith compliance with this
6 chapter shall constitute neglect for any purpose of law or provide
7 the sole basis for the appointment of a guardian or conservator.

8 (d) No health care provider shall be under any duty, whether
9 by contract, by statute, or by any other legal requirement to
10 participate in the provision to a qualified patient of medication to
11 end his or her life in a humane and dignified manner. If a health
12 care provider is unable or unwilling to carry out a patient's
13 request under this chapter, and the patient transfers his or her
14 care to a new health care provider, the prior health care provider
15 shall transfer, upon request, a copy of the patient's relevant
16 medical records to the new health care provider.

17 7198.5. (a) A person who, without authorization of the
18 patient willfully alters or forges a request for medication or
19 conceals or destroys a rescission of that request with the intent or
20 effect of causing the patient's death, shall be guilty of a felony.

21 (b) A person who coerces or exerts undue influence on a
22 patient to request medication for the purpose of ending the
23 patient's life, or to destroy a rescission of such a request, shall be
24 guilty of a felony.

25 (c) Nothing in this chapter limits liability for civil damages
26 resulting from other negligent conduct or intentional misconduct
27 by any person.

28 (d) The penalties in this chapter do not preclude criminal
29 penalties applicable under other law for conduct that is
30 inconsistent with this chapter.

31 Article 4. Severability 32 33

34 7198.9. Any section of this chapter that is held invalid as to
35 any person or circumstance shall not affect the application of any
36 other section of this chapter that can be given full effect without
37 the invalid section or portion thereof.

Article 5. Form of the Request

7199. A request for a medication as authorized by this chapter shall be in substantially the following form:

REQUEST FOR MEDICATION

TO END MY LIFE IN A HUMANE AND DIGNIFIED MANNER

I, _____, am an adult of sound mind.

I am suffering from _____, which my attending physician has determined is a terminal disease and which has been medically confirmed by a consulting physician.

I have been fully informed of my diagnosis, prognosis, the nature of the medication to be prescribed, and the potential associated risks, the expected result, and the feasible alternatives, including comfort care, hospice care, and pain control.

I request that my attending physician prescribe medication that will end my life in a humane and dignified manner.

INITIAL ONE:

_____ I have informed my family of my decision and taken their opinions into consideration.

_____ I have decided not to inform my family of my decision.

_____ I have no family to inform of my decision.

I understand that I have the right to rescind this request at any time.

I understand the full import of this request, and I expect to die when I take the medication to be prescribed.

I make this request voluntarily and without reservation, and I accept full moral responsibility for my actions.

Signed: _____

Dated: _____

DECLARATION OF WITNESSES

We declare that the person signing this request:

(a) Is personally known to us or has provided proof of identity;

(b) Signed this request in our presence;

- (c) Appears to be of sound mind and not under duress, fraud, or undue influence;
- (d) Is not a patient for whom either of us is the attending physician.

Witness 1/Date

Witness 2/Date

NOTE: One witness shall not be a relative (by blood, marriage, or adoption) of the person signing this request, shall not be entitled to any portion of the person's estate upon death, and shall not own, operate, or be employed at a health care facility where the person is a patient or resident. If the patient is an inpatient at a health care facility, one of the witnesses shall be an individual designated by the facility.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.